

NEUTRAL NEWS YOU CAN USE

Summer 2006

► MEDIATION

-- **Mediation continues to grow as a favored alternative dispute resolution mechanism among in-house counsel.** *Corporate Counsel Magazine* (July 13, 2006 Law.com version) reports that at a recent conference of corporate counsel in Atlanta, David C. Vigilante, associate general counsel and chief litigation counsel at Turner Broadcasting stated that “most lawyers will tell you today that mediation is one of the most fantastic things to come along.” This sentiment echoes the findings of Fulbright & Jaworski in the firm’s recent *Second Annual Litigation Trends Survey* which reported that controlling litigation costs is a top priority for in-house counsel, making “contractually agreed” dispute resolution processes, including mediation, an important mechanism in producing savings in litigation expenses.

► ARBITRATION

-- **Arbitrators’ failure to disclose prior and current associations and potential contacts with parties and counsel, may result in mid-arbitration recusal or vacatur of awards.** Ethics codes on arbitral disclosure are strictly enforced. Indeed, the AAA reminds arbitrators “to disclose anything that crosses your mind as a possible ground for the parties to claim bias.” However, some arbitrators and parties fail to meet this standard and expose the arbitral process to delay and the award to vacatur. In order to protect your clients from unnecessary waste of time and resources, carefully check for contacts with potential arbitrators well in advance of the hearings. In addition, counsel should provide updates if new lawyers are added as trial counsel or new witnesses will appear after initial disclosures are made. For a recent case on this subject, see *Applied Industrial Materials Corp. v. Ovalar*, 05 CV 10540 (SDNY 7/06).

► INVESTIGATIONS

-- **Whistle-blowing, sexual harassment, and other grievances by employees and students continue to create vexing situations for corporations, not-for-profits and educational institutions.** The recent *Duke University* case is but one example of an institution that was caught somewhat flat-footed when addressing the claim that members of its lacrosse team had committed sexual crimes against women at a party. After students,

parents, alumni and staff complained about the insensitivity of Duke to diversity issues, the school retained William G. Bowen, a former president of Princeton University, to conduct an independent investigation of the matter. Bowen reported that Duke suffered from “a gap in communications that is extraordinary.” K. Arenson, “*Duke Failed to See Gravity of Rape Case, Report Says*,” New York Times (May 9, 2006). Independent investigations of internal disputes, properly conducted, may help to address problems at an early stage, generate solutions, and avoid collateral litigation.

► TRAINING

-- Clear and direct communication with employees about organizational and individual goals is not only associated with higher job satisfaction and productivity, but is an important component of employment law compliance and diversity programs. The EEOC endorses training in non-discrimination and diversity and companies that fail to train employees on these subjects often have employees with low morale, leading to internal complaints and litigation. Major corporations have embraced diversity, including employee diversity sensitivity training and law firms are following their lead. As reported in the New York Times (July 20, 2006), “Companies that have sought to present a face that reflects the diversity of their customers are keen not to have their lawyers undermine that public image.” The first step for any organization is to link diversity to their business objective and to get their employees on board through customized training that demonstrates the relevance of diversity to the organizational mission and the role of employees in promoting organizational goals. When “[e]very person in the company knows how to individually contribute to its future . . . extraordinary things . . . happen.” *The Five Messages Leaders Must Manage*, Harvard Business Review (May 2006), at 123.

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